

STATE OF ILLINOIS
DEPARTMENT OF HUMAN RIGHTS

IN THE MATTER OF THE
REQUEST FOR REVIEW BY:

M.C.¹

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CHARGE NO: 2008CA0658
EEOC NO: 21BA72661

ORDER

This matter coming before the Chief Legal Counsel Designee upon Complainant's Request for Review ("Request") of the dismissal by the Department of Human Rights ("Department") of Charge No. 2008CA0658, M.C., Complainant, and State of Illinois, Department of Children and Family Services, Respondent; and the Chief Legal Counsel Designee having reviewed de novo the Department's investigation file, including the Investigation Report, Complainant's Request and supporting materials, Respondent's Reply to Complainant's Request ("Reply"), and Complainant's Surreply to Respondent's Reply ("Surreply"); and the Chief Legal Counsel Designee being fully advised of the premises;

NOW, THEREFORE, it is hereby ORDERED:

- I. The dismissal of Counts B, C, D, D8, D9, D10, D11, E, F, L, M and N is VACATED and those counts are REMANDED to the Department's Charge Processing Division for further investigation and other proceedings by the Department; and
- II. The dismissal of Counts A, D1, D2, D3, D4, D5, D6, D7, I, O, P, Q, R, S, T, U and V is SUSTAINED for LACK OF SUBSTANTIAL EVIDENCE.

In support of which determinations the Chief Legal Counsel Designee states the following findings of fact and reasons:

¹ Complainant's name has been replaced by initials consistent with public policy favoring privacy where an individual's disability is at issue.

1. Complainant filed a charge of discrimination with the Department on July 1, 2007, perfected September 18, 2007,² alleging that Respondent subjected her to harassment based on her physical disability, hearing impairment (Count A), issued her a verbal reprimand based on her physical disability (Count B), issued her written reprimands based on her physical disability (Count C), issued her verbal and written reprimands in retaliation for opposing unlawful discrimination and filing an unperfected charge of discrimination against Respondent with the Department (Counts D, D1, D2, D3, D4, D5, D6, D7, D8, D9, D10 and D11), subjected her to unequal terms and conditions of employment based on her physical disability (Count E), failed to accommodate her physical disability (Count F), subjected her to harassment in retaliation for opposing unlawful discrimination and filing an unperfected discrimination charge against Respondent with the Department (Count G), and based on her age, 54 (Count H), suspended her based on her physical disability (Count I), and her age (Count J), and in retaliation for opposing unlawful discrimination and filing an unperfected charge of discrimination against Respondent with the Department (Count K), issued her unacceptable/negative performance evaluations based on her physical disability (Counts L and M),³ and in retaliation for opposing unlawful discrimination and filing an unperfected charge of discrimination against Respondent with the Department (Count N), subjected her to harassment based on her perceived physical disability (Count O), issued her a verbal reprimand based on her perceived physical disability (Count P), issued her written reprimands based on her perceived physical disability (Count Q), suspended her based on her perceived physical disability (Count R), subjected her to unequal terms and conditions of employment based on her perceived physical disability (Count S), failed to accommodate her perceived physical disability (Count T), and issued her unacceptable/negative performance evaluations based on her perceived physical disability (Counts U and V),⁴ in violation of Sections 2-102(A) and 6-101(A) of the Illinois Human Rights Act ("Act").

2. On August 20, 2008, the Department dismissed Counts A, B, C, E, F, I, L and M of Complainant's charge for Lack of Jurisdiction and Counts D, G, H, J, K, N, O, P, Q, R, S, T, U and V of Complainant's charge for Lack of Substantial Evidence. On September 22, 2008, Complainant requested an extension of time to file a Request for Review. On September 23, 2008, the Chief Legal Counsel determined that Complainant established good cause for the request, and, therefore, granted Complainant a fourteen day extension of time to file her Request for Review, until October 8, 2008. 56 Ill. Admin. Code, Chapter II, § 2520.580(b). On October 8, 2008, Complainant filed a timely Request for Review. On November 9, 2009, the Chief Legal Counsel vacated the dismissal of Counts A, B, C, D, E, F, I, L, M, N, O, P, Q, R, S, T, U and V of Complainant's charge and remanded those counts to the Department's Charge Processing

² In September 1998, Complainant filed an unperfected charge against Respondent with the Department. The Department did not allow Complainant to perfect that charge. On May 24, 2001, Complainant filed a mandamus action in the Circuit Court of Cook County, asking that the claims under the Act be adjudicated. On September 19, 2007, the parties entered into a settlement agreement whereby the Department agreed to process Complainant's claims.

³ Counts L and M of Complainant's charge alleging unacceptable/negative performance evaluations based on physical disability are identical counts.

⁴ Counts U and V of Complainant's charge alleging unacceptable/negative performance evaluations based on perceived physical disability are identical counts.

Division for further investigation and sustained the dismissal of Counts G, H, J and K of Complainant's charge. Therefore, Counts G, H, J, and K are not before the Chief Legal Counsel Designee in this Request. On January 8, 2010, the Department dismissed Complainant's charge for Lack of Substantial Evidence.⁵ On January 19, 2010, Complainant requested an extension of time to file a Request for Review. On January 20, 2010, the Chief Legal Counsel Designee determined that Complainant established good cause for the request, and, therefore, granted Complainant a fourteen day extension of time to file her Request for Review, until March 2, 2010. 56 Ill. Admin. Code, Chapter II, § 2520.580(b). On March 2, 2010, Complainant filed this timely Request.

3. As to Counts A and O, Complainant, a Public Service Administrator, Agency Performance Team ("APT") Supervisor, alleges that from March 1998, through April 23, 1999, Respondent subjected her to harassment based on her physical disability, hearing impairment (Meniere's disease), and her perceived physical disability in that, among other things: on June 24, 1998, Respondent verbally reprimanded her for lacking communication skills; on July 22, 1998, Respondent reprimanded her for her inability to understand management directives and for being incompetent, having an inability to understand management directives, and failing to meet deadlines; on July 23, 1998, Respondent issued her a verbal and written reprimand for her inability to comprehend what was said at meetings; on August 6, 1998, Respondent issued her a verbal and written reprimand for failing to meet deadlines, and required her by that date to provide schedules for staff supervisory sessions, and to obtain a policy and procedures manual; on August 7, 1998, Respondent sent her an electronic message, indicating that Complainant had poor judgment and threatening her with progressive discipline; Respondent required her to complete ten staff evaluations by August 7, 1998; on August 14, 1998, Respondent falsely accused her of failing to meet deadlines; on August 25, 1998, Respondent issued her a written reprimand for failing to schedule clinical staffing; on September 15, 1998, Respondent "chastised" Complainant's supervision of her team; on October 15, 1998, Respondent issued her a written reprimand for sleeping during meetings on September 28, 1998, and October 14, 1998; on March 8, 1999, Respondent suspended her for falling asleep at meetings; and on April 23, 1999, Respondent gave her a performance evaluation with an unacceptable rating in five categories.

4. As to Counts B, C, P and Q, Complainant alleges that from March 1998, through April 23, 1999, Respondent issued her verbal and written reprimands including on June 24, 1998, July 22, 1998, July 23, 1998, August 6, 1998, August 25, 1998, and October 15, 1998, based on her physical disability and perceived physical disability. As to Count D, Complainant alleges that from June 1998, through April 23, 1999, Respondent issued her verbal and written reprimands in retaliation for opposing unlawful discrimination and filing an unperfected discrimination charge against Respondent with the Department. As to Count D1, D2, D3, D4, D5, D6, D7, D8, D9, D10 and D11, Complainant alleges that on June 24, 1998, July 22, 1998, July 23, 1998, August 6, 1998, August 7, 1998, August 14, 1998, August 25, 1998, September 28, 1998, October 14,

⁵ In its Addendum to the Investigation Report, dated December 31, 2009 ("Addendum"), the Department inadvertently indicated on Page one that it was again recommending that Counts G, H, J and K of the instant charge be dismissed for Lack of Substantial Evidence. The body of the Addendum, however, is silent as to Counts G, H, J and K, which is proper, where, as previously stated, the Chief Legal Counsel sustained the dismissal of those counts in his Order dated November 9, 2009.

1998, September 15, 1998, and March 8, 1999, respectively, Respondent issued her verbal and written reprimands in retaliation for opposing unlawful discrimination and filing an unperfected discrimination charge against Respondent with the Department. As to Count E and S, Complainant alleges that from March 1998, through April 23, 1999, Respondent subjected her to unequal terms and conditions of employment based on her physical disability and perceived physical disability in that, among other things, Respondent issued to Complainant verbal and written reprimands on June 24, 1998, July 22, 1998, July 23, 1998, August 6, 1998, August 25, 1998, and October 15, 1998; on August 7, 1998, Respondent sent her an electronic message; Respondent required her to complete ten staff evaluations by August 7, 1998; on August 14, 1998, Respondent falsely accused her of failing to meet deadlines; on September 15, 1998, Respondent “chastised” Complainant’s supervision of her team; and on March 8, 1999, Respondent suspended her.

5. As to Counts F and T, Complainant alleges that on August 7, 1998, and March 8, 1999, Respondent failed to accommodate her physical disability and perceived physical disability. As to Counts I and R, Complainant alleges that on March 8, 1999, Respondent suspended her based on her physical disability and her perceived physical disability. As to Counts L, M, N, U and V, Complainant alleges that in March 1998, and April 1999, Respondent issued her an unacceptable/negative performance evaluation based on her physical disability, in retaliation for opposing unlawful discrimination, and filing an unperfected discrimination charge against Respondent with the Department, and based on her perceived physical disability. Further, as to Counts D, D1, D2, D3, D4, D5, D6, D7, D8, D9, D10, D11 and N, Complainant alleges that she engaged in a protected activity on August 31, 1998, when she filed a union grievance regarding an oral reprimand she received from Respondent,⁶ and in September 1998, when she filed an unperfected discrimination charge against Respondent with the Department.

6. As to Counts A, B, C, E, F, I, L and M, Respondent denies that Complainant is a disabled person within the meaning of Section 1-103(I) of the Act. Further, as to B and C, Respondent contends that it disciplined Complainant on numerous occasions in accordance with its policies. In addition, as to Count I, Respondent contends that it suspended Complainant in accordance with its policies. Also, as to Counts L and M, Respondent contends that it evaluated Complainant’s performance in accordance with its performance evaluation policy. As to Counts D and D1 through D11, Respondent denies that it disciplined Complainant in retaliation for her opposing unlawful discrimination. Rather, Respondent contends that it issued verbal and written reprimands to Complainant prior to the time that she engaged in a protected activity. Respondent further contends that it disciplined Complainant in accordance with its policies. As to Count N, Respondent denies that it issued Complainant an unacceptable/negative performance evaluation in retaliation for opposing unlawful discrimination. Rather, Respondent contends that it evaluated Complainant’s performance in accordance with its performance evaluation policy. Respondent further contends that it disciplined Complainant on numerous occasions prior to the

⁶ The Department’s original Investigation Report, Pages five, thirteen, eighteen and twenty and the Addendum, Page seven, indicate that Complainant alleges that on August 31, 1998, she opposed unlawful discrimination when she filed a union grievance regarding her request for a hearing aid-compatible telephone with an amplified receiver. In her charge, Complainant alleges that she grieved on August 31, 1998, reprimands she received from Respondent on August 25, 1998. Documentation in the Department’s investigation file shows that Complainant filed a grievance on August 31, 1998, regarding an oral reprimand she received from Respondent on August 25, 1998.

time that she engaged in a protected activity. As to Counts O, P, Q, R, S, T, U and V, Respondent denies that it perceived Complainant to be a person with a disability.

7. As to Count A, the Department's investigation did not reveal substantial evidence that Respondent subjected Complainant to harassment based on her physical disability. In order to prevail on a claim of harassment, Complainant must establish that Respondent was motivated by a discriminatory intent and that Complainant was subjected to a pattern of incidents that were so pervasive that it constituted a different term and condition of employment based upon a discriminatory factor. See Henry and The Chicago Corp., ___ Ill. HRC Rep. ___, Charge No. 1996CF2615, (ALS No. 9653) (Feb. 2, 2001). A hostile work environment does not result simply because an employee receives unwanted criticism or is subjected to a heavy-handed supervisor. See Patel v. Allstate Insurance Co., 105 F.3d 365 (7th Cir. 1997). The investigation revealed that Complainant was reprimanded on June 24, 1998 (for lacking communication skills), July 22, 1998 (for her inability to understand management directives and for being incompetent, having an inability to understand management directives, and failing to meet deadlines), July 23, 1998 (for her inability to comprehend what was said at meetings), August 6, 1998 (for failing to meet deadlines), August 25, 1998 (for failing to schedule clinical staffing), and October 15, 1998 (for sleeping at meetings on September 28, 1998, and October 14, 1998). The investigation revealed that on August 6, 1998, Complainant was required to provide schedules for staff supervisory sessions and to obtain a policy and procedures manual.

8. Further, as to Count A, the Department's investigation revealed Complainant was required to complete ten staff evaluations by August 7, 1998, was sent an electronic message on August 7, 1998, indicating that she had poor judgment and threatening her with progressive discipline, was accused on August 14, 1998, of failing to meet deadlines, was "chastised" on September 15, 1998, regarding her supervision of her team, was suspended on March 8, 1999, for falling asleep during four meetings, and was given a performance evaluation on April 23, 1999, with an unacceptable rating in five categories. The investigation revealed that the alleged incidents of harassment arose from Respondent's supervision of Complainant and were all job-related. Complainant has not shown that she was subjected to a pattern of discriminatory incidents motivated by her physical disability. Thus, the alleged incidents here do not rise to the level of actionable harassment under the Act. Complainant does not show that Respondent harbored any animus based on her physical disability and does not establish a nexus between the manner in which Complainant was allegedly treated by Respondent and her physical disability. Therefore, there is no substantial evidence that Respondent subjected Complainant to harassment because of her physical disability.

9. As to Counts D1, D2, D3, D4, D5, D6, and D7, there is no substantial evidence that Respondent issued Complainant verbal and written reprimands in retaliation for opposing unlawful discrimination and filing an unperfected charge against Respondent with the Department. To establish a prima facie case for retaliation, Complainant must show that: (1) Complainant engaged in a protected activity; (2) Respondent committed an adverse action against Complainant; and (3) a causal connection existed between the protected activity and the adverse action. Carter Coal Co. v. Human Rights Commission, 261 Ill. App. 3d 1, 7, 633 N.E.2d 202 (5th Dist. 1994). A protected activity is opposition to that which a person reasonably and in good faith believes to be unlawful discrimination, sexual harassment in employment or sexual harassment in elementary, secondary, and higher education, discrimination based on citizenship

status in employment, or because he or she has made a charge, filed a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing under this Act. See 775 ILCS 5/6-101(A). Here, as previously indicated, Complainant alleges that Respondent issued her verbal and written reprimands on June 24, 1998 (Count D1), July 22, 1998 (Count D2), July 23, 1998 (Count D3), August 6, 1998 (Count D4), August 7, 1998 (Count D5), August 14, 1998 (Count D6), and August 25, 1998 (Count D7) in retaliation for filing a grievance under her Collective Bargaining Agreement on August 31, 1998, and for filing an unperfected charge of discrimination with the Department in September 1998.

10. Further as to Counts D1, D2, D3, D4, D5, D6, and D7, the Department's investigation revealed that Complainant's grievances were filed pursuant to her Collective Bargaining Agreement, not the Act, and, as such, the filing of her August 31, 1998, grievance was not a protected activity for purposes of establishing retaliation. Also, the investigation revealed that on September 14, 1998, Complainant filed with the Department an unsworn Complainant's Information Sheet ("CIS"). Section 7A-102(A)(1) of the Act provides that a charge must be under oath or affirmation, 775 ILCS 5/7A-102(A)(1), and Section 7A-102(B) provides that the Department must serve a copy of the charge on the respondent, 775 ILCS 5/7A-102(B). Here, the CIS was not served on Respondent because it was not a charge. Thus, the September 14, 1998, CIS filed with the Department also was not a protected activity. Complainant has not established a prima facie case of retaliation. Even if the August 31, 1998, grievance and the September 14, 1998, CIS were protected activities, the adverse employment actions alleged in Counts D1, D2, D3, D4, D5, D6, and D7, occurred between June 24, 1998, and August 25, 1998, prior to the alleged protected activities. It is axiomatic that the adverse act must follow the protected activity or else, by definition, it cannot be retaliatory. See Bregenhorn and C.C. Services, Inc., ALS No. S10596, 2004 WL 3312882, at *6 (Ill. HRC Apr. 2, 2004). As such, as to Counts D1, D2, D3, D4, D5, D6, and D7, Complainant could not have engaged in a protected activity when she filed the aforementioned grievance or her CIS. Therefore, as to D1, D2, D3, D4, D5, D6 and D7, there is no substantial evidence that Respondent issued Complainant verbal and written reprimands in retaliation for opposing unlawful discrimination and filing an unperfected charge of discrimination against Respondent with the Department.

11. As to Count I, the Department's investigation did not reveal substantial evidence that Respondent suspended Complainant based on her physical disability. As previously indicated, Complainant alleges that Respondent suspended Complainant on March 8, 1999, for sleeping during meetings on four separate occasions. The investigation revealed that Section 3.7 of Respondent's Employee Handbook dated June 2006, entitled, "Use of Intoxicants or Narcotics," provides, in relevant part, that "[e]mployees legitimately using prescription drugs/medication(s) may be exempt from this policy provided that they advise their supervisor, and that such use does not result in less than acceptable job performance and/or that their behavior does not bring adverse criticism on the Department." Section 302.626 of Respondent's Personnel Rules dated November 1997 ("CMS Rules Section 302.626), entitled "Progressive Corrective Discipline," provides that "[u]nless grounds clearly are present warranting immediate discharge or suspension pending decision on discharge, employees shall be subject to corrective discipline progressively utilizing counseling, warnings, and/or suspension, as the facts and circumstances dictate, prior to discharge. If an employee's work or work-related conduct remains unacceptable after the

application of progressive corrective discipline, such employee may be discharged in accordance with the appropriate rules.”

12. Further, as to Count I, the Collective Bargaining Agreement provides that Respondent “agrees with the tenets of progressive and corrective discipline, including oral reprimand, written reprimand, suspension and discharge.” Respondent’s Employee Evaluations policy in its Employee Handbook states that the basic purpose of an evaluation is to document an employee’s performance. The Employee Evaluations policy further states that the evaluation becomes part of an employee’s personnel history and may be used to “to support a personnel transaction or disciplinary action.” The investigation revealed that Respondent suspended Complainant on March 8, 1999, for the period March 11, 1999, to March 18, 1999. The investigation revealed that Complainant acknowledged that she was taking medication that caused drowsiness, that made her sleepy and that she had her eyes closed during the meetings, although she denies sleeping during those meetings. Respondent issued the suspension for unprofessional conduct/sleeping while on duty in connection with her falling asleep during a training class on January 20, 1999, and January 21, 1999, and during a meeting on January 26, 1999, and January 29, 1999. Complainant’s suspension notice further indicated that on October 15, 1998, Complainant was issued a written reprimand for sleeping on duty. The suspension notice advised Complainant that in the event of any similar incidents Respondent intended to initiate more severe disciplinary action, which could include discharge. The evidence shows that Respondent had a good-faith belief that Complainant engaged in unprofessional conduct and, assuming *arguendo* that Complainant was legitimately using prescription drugs/medication(s), she engaged in less than acceptable job performance. The evidence shows that Respondent had a reasonable belief that Complainant’s conduct warranted her suspension.

13. Additionally, as to Count I, Respondent is entitled to make employment decisions based on its reasonable belief surrounding the situation. “Respondent may take its action for good reason, bad reason, reason based on erroneous facts, or for no reason at all, as long as its action is not for a discriminatory reason. . . . The correctness of the reason is not important as long as there was a good faith belief by Respondent in its decision. . . .” Carlin v. Edsal Manufacturing Company, __ Ill. HRC Rep. __, page 14, Charge No. 1992CN3428 (October 21, 1996), quoting Homes and Board of County Commissioner, Morgan County, 26 Ill. HRC Rep. 63 (1986). See also Shah v. Illinois Human Rights Comm’n, 192 Ill. App. 3d 263, 273-74, 548 N.E.2d 695, 701 (1st Dist. 1989) (“A good faith belief for an employment decision is sufficient to rebut an intentional discrimination charge.”). Complainant has not provided any evidence other than her speculation that Respondent’s motivation for suspending her was her physical disability. However, mere speculation or conjecture does not constitute substantial evidence of discrimination. See Willis v. Illinois Dep’t of Human Rights, 307 Ill. App. 3d 317, 326, 718 N.E.2d 240 (4th Dist. 1999). The investigation revealed that Respondent followed Section 3.7 of its Employee Handbook. The investigation further revealed that Respondent followed its Progressive Corrective Discipline policy in suspending Complainant from March 11, 1999, to March 18, 1999. There is no evidence that Respondent’s decision to suspend Complainant was motivated by her physical disability. Therefore, there is no substantial evidence that Respondent’s articulated, non-discriminatory reason for suspending Complainant was pretext for unlawful discrimination.

14. As to Counts O, P, Q, R, S, T, U and V, the Department's investigation did not reveal substantial evidence that Respondent subjected Complainant to harassment, issued her a verbal reprimand, issued her written reprimands, suspended her, subjected her to unequal terms and conditions of employment, failed to accommodate her disability, and issued her unacceptable/negative performance evaluations, all based on her perceived physical disability. The investigation revealed that Complainant is disabled within the meaning of Section 1-103(I) of the Act. As such, since Complainant was in fact disabled, Respondent could not have perceived Complainant to be physically disabled. Therefore, there is no substantial evidence that Respondent subjected Complainant to harassment, issued her a verbal reprimand, issued her written reprimands, suspended her, subjected her to unequal terms and conditions of employment, failed to accommodate her disability, and issued her unacceptable/negative performance evaluations based on her perceived physical disability.

15. As to Counts B, C, E, and F, the Department's investigation is incomplete and further investigation is needed to determine whether there is substantial evidence that Respondent issued Complainant verbal and written reprimands based on her physical disability (Counts B and C), subjected her to unequal terms and conditions of employment based on her physical disability (Count E), and failed to accommodate her physical disability (Count F). The Department's investigation revealed that in 1968, Respondent hired Complainant and, as stated above in paragraph 14, that Complainant is disabled within the meaning of Section 1-103(I) of the Act. Further, as to Counts B, C, E, and F, the Report is unclear as to what events form the basis for each count. The Department needs to evaluate each count separately and not mesh them together. Also, as to Counts B and C, the Investigation Report meshes together in Count B numerous verbal reprimands from various dates, while the Investigation Report meshes together in Count C, numerous written reprimands from various dates. Each discipline alleged by Complainant, however, is a separate harm. As such, the Department must correct its Investigation Report in Counts B and C by clarifying Complainant's allegations and by separately analyzing each alleged incident (e.g., separate date of harm) and making a finding. Therefore, further investigation is necessary to determine whether there is substantial evidence that Respondent issued Complainant verbal reprimands and written reprimands based on her physical disability.

16. As to Count E, a claim of unequal terms and conditions of employment, the Investigation Report is unclear as to what events constituted the unequal terms and conditions to which Respondent subjected Complaint and when each occurred. The Department must ask Complainant to clarify her allegations of unequal terms and conditions of employment by identifying the alleged unequal terms and conditions and the related dates. The Department must then, apart from any other count, analyze and make a finding as to Complainant's allegations of unequal terms and conditions of employment in their totality. Therefore, further investigation is necessary to determine whether there is substantial evidence that Respondent subjected Complainant to unequal terms and conditions of employment based on her physical disability.

17. As to Count F, the Department must separately analyze and make a finding of Complainant's allegation that she requested an accommodation on or about August 7, 1998, for a hearing aid-compatible telephone with an amplified receiver and that Respondent failed to provide that telephone until February 19, 1999, which further hampered her in doing her job and

provided a basis for further criticism and harassment from Respondent. In her charge, Complainant further alleges that she requested accommodation to be allowed breaks “to ward off drowsiness caused by her medication,” and that Respondent refused that accommodation, using Complainant’s disability as further grounds to harass and criticize her. In her charge, Complainant also alleges that she further requested accommodation by repeatedly requesting that Respondent refrain from the continuous, intentional and unlawful discrimination, retaliation and harassment, which exacerbated her condition and provided Respondent with further pretexts for criticism and harassment. The investigation revealed that Respondent contends that Complainant received from Respondent the hearing-aid compatible telephone with an amplified receiver that Complainant had requested. The Investigation Report, Page three, and the Addendum, Page four state in the “Uncontested Facts” section that “[o]n August 7, 1998, Complainant requested and she was given a hearing aid-compatible telephone with an amplified receiver.” The Department must ask Complainant if and when she received the telephone and got her breaks, when her requests were made, and how these requests would have helped her to do her job. Therefore, further investigation is necessary to determine whether there is substantial evidence that Respondent failed to accommodate Complainant’s physical disability.

18. As to Count D, the Department’s investigation is incomplete and further investigation is needed to determine whether there is substantial evidence that Respondent issued Complainant verbal and written reprimands in retaliation for filing a grievance under her Collective Bargaining Agreement on August 31, 1998, and for filing an unperfected charge of discrimination with the Department in September 1998. The Chief Legal Counsel’s order of November 9, 2009, directed that Count D be divided into separate counts for each verbal and written reprimand and be so analyzed. The Addendum to the Investigation Report divided Count D into eleven separate counts, Counts D1 through D11. As such, there is no separate Count D. On remand, the Department must eliminate Count D from its Investigation Report.

19. As to Counts D8, D9, D10 and D11, the Department’s investigation is incomplete and further investigation is needed to determine whether there is substantial evidence that Respondent issued Complainant verbal and written reprimands on September 28, 1998, October 14, 1998, September 15, 1998, and March 8, 1999, in retaliation for filing a grievance under her Collective Bargaining Agreement on August 31, 1998, and for filing an unperfected charge of discrimination with the Department in September 1998. The Department’s investigation revealed that Complainant filed grievances pursuant to her Collective Bargaining Agreement on August 31, 1998, October 28, 1998, and in January 1999, and filed EEOC charges on March 19, 1999, and June 17, 1999. As to the EEOC charges, it appears that they were filed after the verbal and written reprimands complained of in Counts D8, D9, D10 and D11, and as such, they would not be protected activities. As to the grievances, the Department must determine if any of the grievances constituted opposition to unlawful discrimination as the term is used in section 6-101(A) of the Act and if so, analyze whether any of the verbal and written reprimands complained of in Counts D8, D9, D10 and D11, were issued in retaliation thereof. Therefore, further investigation is necessary to determine whether there is substantial evidence that Respondent retaliated against Complainant when it issued to her verbal and written reprimands on September 28, 1998, October 14, 1998, September 15, 1998, and March 8, 1999, in retaliation for filing a grievance under her Collective Bargaining Agreement and for filing an unperfected charge of discrimination with the Department in September 1998.

20. As to Counts L, M and N, the Department's investigation is incomplete and further investigation is needed to determine whether there is substantial evidence that in March 1998, and on April 29, 1999, Respondent issued Complainant an unacceptable/negative performance evaluation because of her physical disability and in retaliation for filing a grievance under her Collective Bargaining Agreement on August 31, 1998, and for filing an unperfected charge of discrimination with the Department in September 1998. Initially, the Addendum analyzes Counts L, M and N with numerous other counts. For the reasons explained above in paragraphs 15, 16 and 17, the Department must separately analyze Counts L, M and N. Further, the investigation revealed that in March 1998, Complainant received an overall performance rating of "Accomplished/Satisfactory" in her performance evaluation for the period January 1, 1997, to December 31, 1997. As such, the March 1998, performance evaluation was not an adverse employment action. If an aggrieved party is unable to allege that she has been detrimentally affected in some way by the employer's action, there is nothing to remedy under the Act. Andres Santiago and Board of Education of the City of Chicago, Charge No. 2008CF2479, 2010 WL 3457712 *3 (Jan. 13, 2010). Although Complainant may have believed her performance warranted a higher rating, "a performance evaluation of 'satisfactory' can hardly be called an adverse action." Id. Therefore, on remand, the Department must determine whether the April 29, 1999, performance evaluation constituted an adverse employment action.

21. In addition, as to Count N, as explained above in paragraph 20, the Department must analyze whether any of the grievances filed by Complainant on August 31, 1998, October 28, 1998, and in January 1999, and either of the EEOC charges filed on March 19, 1999, and June 17, 1999, constitute protected activities under the Act. If the Department determines that the April 29, 1999, performance evaluation constituted an adverse employment action under the Act and that Complainant engaged in a protected activity, the Department must determine if there is a causal connection between the protected activity and the performance evaluation. Therefore, further investigation is necessary to determine if Respondent issued Complainant an unacceptable/negative performance evaluation in retaliation for opposing unlawful discrimination and filing an unperfected charge of discrimination against Respondent with the Department.

22. Therefore, pursuant to Section 2520.587 of the Rules and Regulations of the Department, the dismissal of Counts B, C, D, D8, D9, D10, D11, E, F, L, M and N of Complainant's charge is hereby vacated and those counts are remanded to the Department's Charge Processing Division for further investigation, including the items detailed above, and additional analysis as necessitated by all newly discovered information.

23. In her Request, Complainant fails to provide any additional evidence that would warrant a reversal of the Department's original determination as to Counts A, D1, D2, D3, D4, D5, D6, D7, I, O, P, Q, R, S, T, U and V. Complainant alleges that the Department on remand "skip[ed] the 'further investigation' expressly required by the [Chief Legal Counsel's] Order [dated November 9, 2009,]" did not mention in its Addendum that it did not contact Complainant to obtain her rebuttal, and did not "conduct the 'additional analysis necessitated by all newly discovered information.'" Complainant further alleges that on remand the Department ignored her first Request for Review and supporting Exhibits, which in fact were her rebuttal to the

Department's first dismissal of her charge. The record shows that the Department conducted a thorough, professional investigation in accordance with its established procedures. Complainant also alleges, as she did in her first Request for Review, that she has the statements of multiple witnesses who contradict Respondent's contention that Complainant "fell asleep" during six separate meetings. The investigation revealed that Complainant indicated that she closed her eyes during meetings because her medication made her drowsy. Respondent had a reasonable belief that Complainant was sleeping during those meetings. Respondent made a decision based on Complainant's violation of its policies, and it is inappropriate for the Department to "sit as a super-personnel department that reexamines an entity's business decisions" in cases where discrimination is alleged. Dale v. Chicago Tribune Company, 797 F. 2d 458, 464 (7th Cir. 1987). Complainant's Request is not persuasive as to Counts A, D1, D2, D3, D4, D5, D6, D7, I, O, P, Q, R, S, T, U and V.

24. In its Reply, Respondent contends that the Department properly dismissed Counts A, D1, D2, D3, D4, D5, D6, D7, I, O, P, Q, R, S, T, U and V of Complainant's charge.

25. In its Surreply, Complainant fails to provide any additional evidence that would warrant a reversal of the Department's original determination as to Counts A, D1, D2, D3, D4, D5, D6, D7, I, O, P, Q, R, S, T, U and V.

26. In sum, as to Counts A, D1, D2, D3, D4, D5, D6, D7, I, O, P, Q, R, S, T, U and V, Complainant failed to establish, and the Department's investigation failed to show, that Respondent subjected Complainant to harassment based on her physical disability, issued her verbal and written reprimands in retaliation for opposing unlawful discrimination and filing an unperfected discrimination charge against Respondent with the Department, suspended her based on her physical disability, issued her an unacceptable/negative performance evaluation based on her physical disability, subjected her to harassment based on her perceived physical disability, issued her verbal reprimands based on her perceived physical disability, issued her written reprimands based on her perceived physical disability, suspended her based on her perceived physical disability, subjected her to unequal terms and conditions based on her perceived physical disability, failed to accommodate her perceived disability, and issued her an unacceptable/negative performance evaluation based on her perceived physical disability.

27. This is a not a final Order. It may not be appealed until all aspects of the charge are resolved.

ENTERED THIS _____ DAY OF _____, 2011.

Michael I. Lieberman
Supervising Attorney
Chief Legal Counsel Designee